IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3965 OF 2005

WITH

WRIT PETITION NO. 4151 OF 2005

WRIT PETITION NO.3965 OF 2005

Bara Imam Masjid Trust
& Ors. . .. Petitioners.

vs.

The Charity Commissioner,
Maharashtra State & Ors. .. Respondents.

Mr. R.D. Soni for petitioners.
Mr. Ramesh Dube Patil for respondent no.7.
Mr. S.V. Dhakephalkar for R. No. 30,
Mr. A.V. Anturkar for Mrs. Vanita V. Bakre
Shastri for R. Nos. 13,17, 18 & 21.
Mr. P.N. Jodhi for Respondent No. 4.

WRIT PETITION NO. 4151 OF 2005

M/s. Rajvi Buildwell Pvt.
Ltd., & Ors. . .. Petitioners.

vs.

The Charity Commissioner,

Maharashtra State & Ors. .. Respondents.

Mr. Pravin Samdani with Mr. Sanjay Gawade, Adv., for petitioners.

Mr. Ramesh Dube Patil i/by M/s. Jay & Co. for respondent no.2 & 7.

Mr. S.V. Dhakephalkar for R. No. 31,

Mr. A.V. Anturkar for Mrs. Vanita V. Bakre Shastri for R. Nos. 11,14, 20 & 21.

Mr. M.H. Solkar, AGP, for State.

CORAM : S.U. KAMDAR, J.

DATE : 21st December, 2005.

ORAL JUDGMENT :

. These two writ petitions are challenging the common order passed by the Charity Commissioner, Pune dated 19.4.2005 refusing to grant permission under Section 36 of the Bombay Public Trusts Act, 1950 to the petitioners for the sale of the trust property. Since both the writ petitions are arising out of a common order, both of them are disposed of together by this common judgment.

2. Some of the material facts in Writ Petition 3965 of 2005 are briefly enumerated as under.

3. The petitioner trust is a public trust registered under the provisions of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the said Act) bearing PTR No. B-189 (ANR). Petitioner Nos. 2 to 6 are trustees of the petitioner no. 1 trust. The trust owns land bearing survey nos. 20, 21, 22 and 23 admeasuring 15 hectars and 29 Ares situated at Savedi, Ahmednagar. The said land is situated in the heart of the city. After the commencement of the trust, some time in or about 1994, an application was made under Section 50A (3) of the said Act for modification of the scheme and accordingly the scheme was modified by the authorities thereby the scope and object of the Trust was changed and several new objects were included in the scheme of the Trust. The original object was only to maintain the masjid and now with the amended objectives various other secular objects, inter alia, running of educational institutions, etc., have been introduced. It is not in dispute that large amount of property out of the property which is held by the Trust is in possession of one Baraskar family who are claiming to be the tenants in possession of the said property and the dispute between the tenants and the petitioner trustees for the purpose of possession of the said land is in court. There are various other litigations as against various other tenants which

are pending in various courts. It is the case of the petitioner that out of the said trust property the petitioner was getting a meagre income of small amount of Rs. 100/- per annum and accordingly on 28.1.2001 held a meeting and decided to alienate part of the land admeasuring to 15 hectars and 29 Ares so that necessary funds can be generated for the purpose of fulfilling and achieving the objects of the Trust. It was decided in the said meeting that the Trust will purchase another suitable property from the funds recovered from the sale thereof and carry on the activities of the trust. The petitioner no. 1 thereafter invited bids by way of private circulation for alienation of the said property. The petitioner also got the said land valued and the valuer had valued the said land at Rs. 3.90 crores as the market value of the said land. The said market value was arrived at on the basis of various tenants in possession and the pending litigation. On 24.11.2001 pursuant to the invitation of bids, the petitioner entered into a contract with one Rajiv Buildwell Pvt. Ltd., for a sum of Rs. 4.81 crores who was the highest offerer in respect of the purchase of the said land. Subsequently, the petitioner Trust entered into negotiations and M/s. Rajvi Buildwell Pvt. Ltd., increased their offer to Rs. 5 crores which was accepted by the Trust and an agreement for sale was entered into. Pursuant to the said acceptance of

the said offer the petitioners filed an application under Section 36 of the said Act for the purpose of sanction. On 1.12.2001 the learned Joint Charity Commissioner directed that the petitioners should invite fresh tenders by issuing advertisements in reputed newspapers. On 9.6.2001, as per the directions of the Joint Charity Commissioner the petitioners issued advertisements in various newspapers and fresh offers were invited. Pursuant to the said advertisement, the offers received by the petitioners were as under :-

	Tenderers	Amount Offered.
1.	Priti Chhajed	7,80,60,000/-
2.	Radiant Builders (It was development agreement)	
3.	Ansar Baig	10,00,00,000/-
4.	Happy Home Developers.	4,50,00,000/-
5.	Shivani Developers	4,51,00,000/-
6.	Rajavi Buildwell Pvt.Ltd.,	5,00,00,000/-

According to the petitioners, out of the said offers, the offer of Rajavi Buildwell Pvt. Ltd., was only eligible as the condition to give a demand draft along with the offer of 40% of the offer amount was not fulfilled by other two highest offerers, namely Priti Chhajed of Rs. 7,80,60,000/- and Ansar Baig of Rs. 10,00,00,000/- Thus, the petitioners found that Rajavi Buildwell Pvt. Ltd.,

was the highest bidder at the sum of Rs. 5 crores. Thereafter on 15.1.2003, the petitioner made an application before the 2nd respondent for issuing a notice to all the offerers to increase the offer and fulfil the terms and conditions of the tender. However, it is the case of the petitioners that the said application has been rejected by the Joint Charity Commissioner on 19.4.2005.

4. Various persons filed written objections before the Charity Commissioner in the said Section 36 proceedings for sanction of sale. The objections filed are basically three fold. The first set of objections contend that the trust should not be permitted at all to sell the said property because there is no need for sale of the said property. The second objection filed is that the sale is sought to be effected by the trustees at much undervalued price and the rejection of the two highest offers of Rs.7,80,60,000/- and Rs. 10,00,00,000/- were illegal and merely on a technical ground that in place of giving a demand draft of 40% of the amount of offer, a cheque has been given by the said bidders. The third contention was that the Charity Commissioner has no jurisdiction to grant sanction of the sale under Section 36 of the said Act because it is the Wakf Property and, therefore, the provisions of Bombay Public Trusts Act giving jurisdiction to the Charity Commissioner is not

available to grant sanction thereof. After considering the objections, the Charity Commissioner has passed the impugned order dated 19.4.2005 by which the Charity Commissioner has rejected the application under Section 36 of the said Act filed by the petitioner for sale of the said property. While rejecting the application, the Charity Commissioner has inter alia held that it has jurisdiction as the property is not wakf property and covered by the provisions of the said Act. This finding of the Charity Commissioner has not been challenged before me by any of the parties either by filing writ petition or filing any cross-objections nor the said issue is agitated before me. Thus, I do not propose to go into the same. However, the Charity Commissioner has rejected the application on three grounds also which are pressed by the respondents in the present case before me. Firstly, he has held that the amendment of the scheme of the trust under Section 50A (3) in 1994 by the Assistant Charity Commissioner was illegal and unlawful and therefore the said amendment should be set aside and ignored and only the original scheme should be permitted to be operated and considered for the purpose of granting the permission under Section 36 or not. The second finding given by the Charity Commissioner is that there is no compelling need on the part of the trustees to sell the said property and the third and the last finding given is that the

trustees are seeking to sale the property for the ulterior motive and at the very suppressed price. The Charity Commissioner has thereafter given permission to the intervenors to apply to the Charity Commissioner for the purpose of removal of petitioners nos. 2 to 6 trustees because they are acting contrary to the interest of the trust. It is these findings of the Charity Commissioner which are under challenge before me.

5. The second writ petition being Writ Petition No. 4151 of 2005 has been filed by the highest offerer M/s. Ravji Buildwell Pvt. Ltd., whose offer of Rs. 5 crore for the purchase of the property was not accepted. It is his contention that he being the highest offerer his offer should have been accepted by the Charity Commissioner and other two offers of Rs. 7,80,60,000/- and Rs. 10 crores are non-eligible offers because their offer was not in compliance with the terms and conditions of the tender conditions which were issued by giving advertisements in the newspapers pursuant to the directions of the Charity Commissioner. The said writ petitioner also contends that it was not the jurisdiction of the Charity Commissioner to go into the need or otherwise of the said trust because that is the sole subjective decision of the trustees and the Charity Commissioner has no jurisdiction to substitute his views in place of the views of the

trustees.

6. Both these writ petitions have been argued before me on various occasions. Before I go into the rival contentions of the parties, I am of the view that it is my duty to pin point a regular disturbing factor in the present case. Respondent no. 9 in the present case is one Janmohammad Haji Abdul Gafur. It seems that he is one of the objectors before the Charity Commissioner. However, I have been informed by all the parties that he never appeared before the Charity Commissioner. This gentleman has not appeared even before this Court. But I find that in place of attending the hearing of the matter and addressing the Court either by himself or through an advocate or pleader, he is sending telegrams to the Court as well as letters making false and wild allegations. This kind of activity of a litigant before the Court is rather disturbing because it was open for him to appear in the matter. However, once I received the telegram, I directed the office by my order dated 12.12.2005 to give telegraphic notice to him to appear and state his objections but inspite of the notice he has remained absent. The allegations made by him in the proceedings are that I am in a hurry to dispose of the matter without even knowing the true and correct facts of the case. The matter has been adjourned by me from 19.11.2005 and I am

addressed by a large number of lawyers from all sides. The matter was on my Board on 19.11.2005. Thereafter on 23.11.2005. Thereafter on 29.11.2005. The matter was thereafter on Board on 12.12.2005. The matter was thereafter on my Board on 15.12.2005. On 16.12.2005 after hearing the parties once again, I have reserved the judgment. I am of the view that the tendency which is displayed of sending telegrams and letters to the Judge in private without being appearing in Court is required to be deprecated. The hallmark of the judicial process is openness and transparency it requires that the matter should be thrashed out in the open Court and not by sending telegrams and letters to the Judge in Chamber and refusing to attend the matter in open Court. I am of the view that this kind of tendency must be stopped and necessary action must be initiated for making wild allegations by way of sending telegrams and letters to the Judge privately.

7. Now turning to the petitions on merits of the case, the learned counsel for the Petitioners Mr. Tulzapurkar has contended that the order passed by the Charity Commissioner on all the three reasons on the basis of which he has refused to grant permission is unsustainable in law. According to him, the first reason given by the Charity Commissioner that the grant of an amendment to the scheme in 1994 by the Assistant Charity Commissioner

was illegal and the said amendment discarded while considering an application for sanction of sale under Section 36 cannot be sustained because of the fact that while dealing with the application under Section 36 the Charity Commissioner has no jurisdiction to go into the question of validity or otherwise of the order passed by the Assistant Charity Commissioner in 1994 and was not challenged further in any Court of law and has thus attained finality. He has also drawn my attention to the provisions of Section 36 (1) and Section 50A are reproduced hereinunder:

> 36. Alienation of immovable property of public trust.
>
> [(1)] [Notwithstanding anything contained in the instrument of trust]
>
> (a) no sale, exchange or gift of any immovable property, and
>
> (b) no lease for a period exceeding ten years in the case of agricultural land or for a period exceeding three years in the case of non-agricultural land or a building belonging to a public trust, shall be valid without the previous sanction of the Charity Commissioner. [Sanction may be accorded

subject to such condition as the Charity Commissioner may think fit to impose, regard being had to the interest, benefit or protection of the trust;

(c) if the Charity Commissioner is satisfied that in the interest of any public trust any immovable property thereof should be disposed of, he may, on application, authorise any trustee to dispose of such property subject to such conditions as he may think fit to impose, regard being had to the interest or benefit or protection of the trust."

"50A. Power of Charity Commissioner to frame, amalgamate or modify schemes.

(1) Notwithstanding anything contained in section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the proper management or administration of a

public trust, a scheme should be settled for it, the Charity Commissioner may, if, after giving the trustees of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) Where the Charity Commissioner is of opinion that in the interest of the proper management or administration, two or more public trusts may be amalgamated by framing a common scheme for the same, he may, after --

(a) publishing a note in the Official Gazette [and also if necessary in any newspaper which in the opinion of the Charity Commissioner is best calculated to bring to the notice of persons likely to be interested in the trust] with a wide circulation in the region ink which the trust is registered, and

(b) giving the trustees of such trusts and all other interested persons due opportunity to be heard,

frame a common scheme for the same.

(3) the Charity Commissioner may, at any time, after hearing the trustees, modify the scheme framed by him under sub-section (1) or sub-section (2).

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent court under section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50].

In my opinion the provisions of both the Sections are independent and are not overlapping. The power of the Charity Commissioner to permit the petitioner to amend the scheme of the trust once exercised as far back as 1994 then in that event the person who is aggrieved by the said amendment of scheme can only prefer an appeal against the said order and the Charity Commissioner in a collateral proceedings under Section 36 of the said Act cannot reexamine the validity or otherwise of the order passed by other Commissioner of coordinate jurisdiction under Section 50A of the said Act. Mr. Anturkar, the learned counsel for some of the objectioners has

fairly conceded that the said reasons cannot be supported in law. Even otherwise also I am of the opinion that the Charity Commissioner has in impugned order exceeded his jurisdiction by going into the validity or otherwise of amended scheme. The said amendment to the scheme under Section 50 A was granted as far back as in 1994 and by virtue of no further challenge thereto has achieved a finality and thus the Charity Commissioner in Section 36 (1) proceedings could not have examined the legality or validity of the order passed under the provisions of Section 50A of the said Act. In that light of the matter, the aforesaid finding of the Charity Commissioner is without jurisdiction and cannot be sustained.

8. Now turning to the next contention which has been keenly contested by all the parties, namely, need of the trust to dispose of the said property, the learned counsel have inter alia contended that the activity of the trust has become stagnant and there is no activity of the trust which can be carried out without sale of the said property. It has been contended now that large portion of the property is already under litigation with the tenant who is in possession of the said property namely, Baraskar family and who is claiming that the said land is in his use, occupation and possession and he is entitled to protection under the provisions of

the Bombay Tenancy and Agricultural Lands Act. It has also been contended that trust income is only Rs. 100/- per annum though the trust has got a huge plot of land in a very prime location. It has been contended that the trustees have decided to liquidate the said portion of the property and after liquidating the said substantial portion of the property receive the amount and utilise the said amount for buying another immovable property as well as to apply income therefrom to various philanthropic objects of the trust so as to provide the benefits to their community rather than keeping the property stagnant and do not provide any succour to the Muslim community which was the main object of the said trust. The petitioners further contended that in any event, this is the subjective decision of the trustees and the Charity Commissioner while determining the need of the sale of the property cannot substitute his own subjective satisfaction in place of the decision of the public trust. The role of the Charity Commissioner under Section 36 (1) is the role of supervisory nature and not the role of substituting itself in place of the institution who has found it best for the purpose of achieving the objects of the Trust to sell and/or dispose of the property. Dr. Tulzapurkar, the learned counsel for the petitioners has taken strong objections to the findings of the Charity Commissioner that the trustees are seeking to sell the property for their

own personal enrichment and benefit and not for the purpose of achieving the objects of the Trust. The learned counsel for the petitioners contended that by no stretch of imagination can it be said that meagre income of Rs. 100/- per annum which the Trust has been getting is sufficient to further the objects and goals of the Trust and that therefore, the property should not be sold. It has been contended that the trustees being in charge of the trust property are the sole and the only persons to determine the administration and management of the trust and so long as it is lawful and within the four corners of law, the Charity Commissioner cannot interfere with the functioning of the trustee and take upon itself to determine how the trust should be run and managed by the trustees. Mr. Anturkar, the learned counsel appearing for Respondents Nos. 13, 17, 18 and 21 and other senior counsel have contended that the property should not be sold. It has been contended that the only object of the trust was to maintain the masjid and by selling the property the said object is sought to be defeated. It has been contended that for achievement of so called various other objects which are introduced by modification of the scheme the trustees are seeking refuge thereunder to sell the said property which is the only asset of the trust and the said contention of the trustees is not bonafide. It has been contended that the trustees have no need to dispose

of the said property and even without disposing of the said property the said masjid can be maintained. There are certain other institutions i.e. Wakf and other Muslim communities have also intervened in the matter and have contended that they are willing to fund the petitioner trust to maintain its status and retain the land and the Trust should not be permitted to sell the said land. It has been contended by the said objectors that the trust property is required to be kept for the purpose of benefit of the Muslims and should not be disposed of to third parties. It has been thus contended that the property should not be permitted to be sold at all by the trustees.

9. I have considered the aforesaid contentions which are laid before me. It is clear that the property is admittedly fetching no income. There is no serious dispute on the contention of the petitioner that the income generated from the trust property is so meagre that it cannot be applied to achieve any of the objects and purpose of the trust. It is also not in dispute that no substantial objects have been achieved. All the objectors are those people who are in possession of the land and are not willing to disturb their possession. One of the major tenant namely Baraskar family who is the objector contends that the property should not be sold because he does not wish his possession to be

disturbed in accordance with law. In my opinion some of the objectors are interested in maintaining the property for their own objects rather than the objects of the trust. The offer of the other institutions to maintain the trust is also not bonafide because when I put to them whether they are willing to buy over the property so that the property can be maintained by them for the benefit of the Muslim community, none of the said institutions was willing to do so. In my opinion, the object of the trust cannot be brushed aside and it cannot be brought to a grinding halt by some objectioners by contending that the property is meant for masjid and the trustees only role is to maintain the masjid and need not fulfil the other objects of the said trust. In my opinion, if the trust has taken the decision that they want to dispose of the property and enhance their objects by fulfilling more and other objects of the trust then in that event it is neither in the jurisdiction of the Charity Commissioner nor of this Court to substitute the decision of the said trust and go behind it. I am also of the further opinion that essentially it is the trustees who are supposed to determine how best they would and they can deal with the assets of the trust and that is for the benefits of the trust. The power conferred under Section 36 (1) on the Charity Commissioner is to ascertain whether the property is sold in the interest of the

trust and whether it is sold at the best price available to the trust. The Charity Commissioner cannot go into the validity of the decision whether the property should be rightly decided to be sold or not. In my opinion, the finding of fact whether it is in the interest of the trust or not to sell the property,the decision of the Charity Commissioner must be objective and based on material placed before him. The Charity Commissioner has only considered that it is not for a compelling need by holding that it seems that the trustees are interested in disposing of the property for their own personal benefits because they are likely to get a share of the said amount to themselves under the scheme which has been sanctioned by the Charity Commissioner. I am of the opinion that these are not the grounds on which the decision of the trustees to sell the property can be interfered with and/or set aside by the Charity Commissioner in exercise of jurisdiction under section 36 (1) of the said Act. Thus, I am of the opinion that the said finding of the Charity Commissioner cannot be sustained and the same is accordingly quashed and set aside.

10. The last contention advanced before me by the learned counsel for all the parties is the price at which the said property is sought to be sold. All the parties have placed before me that the property

being situated in the heart of the city, it is necessary that this Court must go into the price at which the sale is sought to be effected. It has been contended that the amount of Rs. 5 crores has been accepted by the trustees though there were higher offers of 7,80,60,000/- and Rs. 10 crores which was pursuant to the advertisements issued. The learned counsel for the petitioners in Writ Petition No. 4151 of 2005 on the other hand has contended that he is the only eligible offerer and who has given the demand draft of 40% amount as per the terms and conditions of the said advertisement. It has been contended that it is now well settled that the offers which do not fulfil the terms and conditions of the tender document are not eligible to be considered for the purpose of sale of the said property. However, the learned counsel for the petitioners in the aforesaid writ petition enhanced the offer before me to a sum of Rs. 10 crores in pursuance to my disinclination to accept the offer of Rs. 5 crores for the said property. I first thought that I could refer the matter back to the Charity Commissioner but on the second thoughts and in the light of the fact that various other outsiders have intervened to increase the price of the said offer, I thought it fit and proper to permit the various purchasers to give their bids in the open Court. After substantial increase amongst the bidders I have ultimately found that the highest

bid is of the respondent no. 4 for the sum of Rs. 20 crores. Pursuant to the same I passed the order on 12.12.2005 by which I have first asked the respondent no. 4 to deposit a sum of Rs. 4.80 crores by demand draft in this Court before his offer could be considered. The respondent no. 4 has given the said demand drafts. The matter was thereafter placed on 16.12.2005 with direction to the respondent no. 4 to file an affidavit in respect of the payment of the balance price and accepting a condition that in the event of non-payment of the balance price the amount of Rs. 1 crore would be forfeited. On 16.12.2005, the respondent no. 4 made an application that the demand draft of Rs. 4.80 crores which had been deposited by him on 12.12.2005 be permitted to be substituted with a fresh demand draft of Rs. 4.80 crores. Accordingly on 16.12.2005 I permitted the respondent no. 4 to replace the said demand draft with fresh demand draft of Rs. 4.80 crores. He has also filed an affidavit dated 16.12.2005 accepting the various terms and conditions such as the fact that the sale is on "as is where is" basis. Secondly that he is accepting the price of Rs. 20 crores and the balance amount will be deposited within the time stipulated and mentioned in his affidavit dated 16.12.2005 and on failure to do so a sum of Rs. 1 crore is to be forfeited. In the light of the aforesaid facts, I am of the opinion

that once the enhanced offer from Rs. 5 crores to Rs. 20 crores which is in the interest of the trust should be accepted and no useful purpose would be served by remanding the matter back to the Charity Commissioner. In that light of the matter, I am of the opinion that the trust is entitled to sell the property subject to two following conditions, namely, that the amount received from the sale of the said property will be utilised by the petitioners only for the purpose of administration of the trust and towards achieving the objects of the said trust as per the scheme which is in operation and secondly that out of the said amount, the trust will buy another immovable property as offered by them before the Charity Commissioner as well as before me for the purpose of installation of masjid and for carrying out other activities of the said trust. The permission is granted accordingly to the petitioner trust to sell the said property for Rs. 20 crores to the respondent no. 4 subject to the aforesaid two conditions. In an event if the respondent no. 4 commits a default the said sum of Rs. 1 crore would be forfeited and thereafter the petitioner trust will be at liberty to sell the said property but the same will be by way of a public auction by giving advertisement in the newspaper and not by any private treaty. I make both the petitions absolute accordingly. However, there shall be no order as to costs.